



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
[www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

Arnold Schwarzenegger  
Governor

November 30, 2009

Nardy Khan  
Orange County Public Works  
300 North Flower Street  
Santa Ana, CA 92703

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE ALTON PARKWAY EXTENSION PROJECT, IRVINE  
BOULEVARD TO COMMERCENTRE DRIVE, CITY OF IRVINE, ORANGE COUNTY  
(ACOE REFERENCE NO. SPL – 2002 – 00937)**

Dear Ms. Khan:

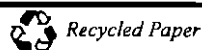
On July 23, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted by RBF Consulting on behalf of Orange County Public Works and Shea Baker Ranch Associates, for the extension of Alton Parkway from Irvine Boulevard, in the City of Irvine, to Towne Centre Drive in the City of Lake Forest. Orange County Public Works and Shea Baker Ranch Associates are responsible for separate segments of the proposed roadway extension. Orange County Public Works will be responsible for construction between Irvine Boulevard and Commercentre Drive and Shea Baker Ranch will be responsible for construction between Commercentre Drive and Towne Centre Drive.

Although the application was submitted jointly, there are two separate applicants for two separate roadway segments. Consequently, Regional Board staff has responded to each applicant for their corresponding project separately.

The application from Orange County Public Works was deemed complete on August 22, 2008 and denied without prejudice on October 3, 2008. Following receipt of some, but not all, of the items requested in the October 3, 2008 denial without prejudice, a second denial without prejudice was issued on May 1, 2009. The final item requested in the May 1, 2009 denial without prejudice was received on August 17, 2009.

This letter responds to the request from Orange County Public Works for Certification that the proposed project, described in its application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments. A

***California Environmental Protection Agency***



separate response will be provided to Shea Baker Ranch Associates' request for Certification in a separate action at a later time.

**Project Description:**

Construction of a one-mile extension of Alton Parkway from its current terminus at Irvine Boulevard to its planned intersection with Commercentre Drive. Commercentre Drive will be improved, from its planned intersection with Alton Parkway to its existing terminus, into a four-lane roadway. Alton Parkway will consist of a six-lane roadway with a 14-foot wide median, bicycle lanes, and sidewalks. The Alton Parkway roadway alignment will involve placing an approximately 1,500-foot long reach of Borrego Canyon Wash into a box culvert beneath the proposed alignment. An additional 265 feet of the Wash will be lined with concrete or rip-rap. The roadway project is located within Sections 174 and 175 and within Township 6 South, Range 8 West, as shown on the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33 deg. 40 min. 14 sec. N/ -117 deg. 41 min. 24 sec. W).

Receiving water:	Borrego Canyon Wash and un-named drainages thereto.
Fill area:	3.48 acres of ephemeral drainages (3,366 linear feet total).
Dredge volume:	Not applicable.
Federal permit:	U.S. Army Corps of Engineers Individual Permit No. SPL – 2002 – 00937

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

**Onsite Water Quality Standards Mitigation Proposed:**

- Sandbags, straw wattles, silt fences, and other best management practices ("BMPs") will be employed to remove pollutants from storm water runoff from the project site during construction.
- Additional site-specific BMPs will be specified in the project Storm Water Pollution Prevention Plan ("SWPPP").
- Pollutants in storm water runoff from the roadway will be treated in vegetated swales, situated parallel to most of the road, and in three extended detention basins.

**Off-site Water Quality Standards Mitigation Proposed:**

In order to compensate for impacts to beneficial uses of Borrego Canyon Wash, resulting from discharges of fill to 1,800 feet of its length, an approximately 1,650-foot long, 300-foot wide (at top of bank; channel bottom width is expected to be 150 to 200-feet wide, with a 20 to 30-foot wide low-flow channel), channel will be excavated, from the Magazine Road undercrossing at Irvine Boulevard, to within approximately 80-feet of Borrego Canyon Wash. The excavated channel will convey flows diverted from Borrego Canyon Wash to the future Wildlife Corridor proposed as part of The Great Park. The excavated channel and the intervening uplands between Borrego Canyon Wash and the excavated channel will be vegetated with native vegetation with the intention of encouraging wildlife movement between the Wash and the Wildlife Corridor. The excavated channel will include two gabion drop-structures and will result in the creation of 5.45 acres of waters of the State.

A flow splitter will be constructed in Borrego Canyon Wash, adjacent to the inlet of the proposed 1,500-foot long box culvert, to divert flows into a buried pipe which will convey the flows 11-feet beneath the intervening uplands to the excavated channel<sup>1</sup>. The flow splitter will be operated and maintained by the Orange County Flood Control District for flood control purposes and by the City of Irvine for diversion purposes. The pipe and excavated channel will be operated and maintained by the City of Irvine. The flow splitter will be designed in a manner that limits the amount of bed load sediments that can enter the excavated channel and the Great Park Wildlife Corridor. Flows will not be diverted into the excavated channel until the Wildlife Corridor has been constructed by others. In the interim, the native vegetation will be artificially irrigated. Reclaimed wastewater may be used for irrigation.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2009-0030 requires that you substantially comply with the requirements of the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction and Land Disturbance

---

<sup>1</sup> The splitter is proposed to employ a multi-stage diversion: zero to 200 cubic feet per second ("cfs") will be diverted from Borrego Canyon Wash for storm runoff events less than the 10-year event; approximately 900-cfs will be diverted for events between the 10-year and the 25-year event; approximately 1,200-cfs will be diverted during the 25-year event; and approximately 1,380-cfs will be diverted during the 100-year event.



Activities, Water Quality Order 99-08 DWQ, until June 30, 2010, and with Order No. 2009-0009-DWQ thereafter, including preparation of a SWPPP.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2007-0041, NPDES No. CAG998002 ("Order No. R8-2007-0041), "General Discharge Permit for Discharges to Surface Waters of Groundwater Resulting from Groundwater Dewatering Operations and/or Groundwater Cleanup Activities at Sites Within the San Diego Creek/Newport Bay Watershed Polluted by Petroleum Hydrocarbons, Solvents, Metals, and/or Salts", as amended by Order No. R8-2009-0045. For more information, please review Order No. R8-2007-41 and Order No. R8-2009-0045 at:

[www.waterboards.ca.gov/santaana/board\\_decisions/adopted\\_orders/orders/2007\\_orders.shtml](http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2007_orders.shtml)

You have applied for an Individual Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), the Orange County Board of Supervisors certified an Environmental Impact Report (EIR) for the proposed project on September 18, 2007 (State Clearinghouse No. 2002121105). The EIR considered an alternate alignment, which would have maintained most of Borrego Canyon Wash as an open channel, as the preferred project. However, the Orange County Board of Supervisors certified the EIR and approved the proposed project, involving the fill of 1,800 feet of Borrego Canyon Wash, instead.

The County Board of Supervisors approved the proposed project on the basis that the proposed project was environmentally superior. In support of this approval, County staff, in their August 8, 2007 Staff Report asserted that "by having the area west of the [flow] split channelized, wildlife would be more inclined to follow the vegetated path and utilize the wildlife corridor". Regional Board staff has questioned the necessity of filling Borrego Canyon Wash to influence wildlife movement and if or when the Wildlife Corridor would be constructed to realize the alleged benefits of filling the Wash.

Habitat destruction and habitat fragmentation are among the most cited reasons for impacts to wildlife populations. The proposed project involves the trade-off of wildlife habitat, and wildlife-related beneficial uses, lost in the fill of 1,800-linear feet of Borrego Canyon Wash, for future improvement in the connectivity of wildlife habitat between the Central and Coastal Reserves. Regional Board staff believes that County staff's reasoning to support the proposed project, and its related trade-offs, involves various underlying assumptions about the proposed project that warrant careful consideration. Board staff believes that these questionable underlying assumptions include the following:

- 1) habitat destruction is the best method of influencing wildlife movement into the Wildlife Corridor;

- 2) habitat destruction will provide a long-term, net benefit to wildlife populations where habitat connectivity improvements are provided;
- 3) conservation of habitat and habitat connectivity improvements cannot be achieved together; and
- 4) all wildlife species populations utilizing the habitat that is to be destroyed will benefit from the proposed habitat connectivity improvements.

County staff has not provided substantial evidence (published reports, expert opinion, etc.) to support the above assumptions underlying the proposed project. Instead, County staff relies on the support obtained from staff of the resource agencies. However, the County's EIR does not indicate the selective manner in which the described habitat connectivity mitigation would be offered to the resource agencies. County staff offered to improve habitat connectivity for the project proposed for this Certification, but not for alternative alignments. It is apparent that the support of the proposed project that has been obtained from the resources agencies was influenced by this limited mitigation proposal.

The October 3, 2008 and May 1, 2009 denials without prejudice were issued based on these and other concerns. Subsequently, County staff has asserted, in a letter dated August 17, 2009, that the alignment proposed in the EIR is no longer "practical or realistic" and supports this conclusion with various reasons. While Regional Board staff does not regard each of the reasons to have equal merit, we believe that County staff's August 17, 2009 letter contains some compelling arguments.

Principal among them is that, by constructing an alignment that avoids placing 1,850-feet of Borrego Canyon Wash in an underground storm drain, changes would need to be made to plans for the expansion of the Orange County Sheriff's James A. Musick Facility ("jail"). According to County staff's August 17, 2009 letter, the changes to the jail would conflict with "the need for additional jail beds, reduce agricultural buffer zone, and require modifications to building heights, which would be objectionable to local municipalities". Regional Board staff's understanding is that in order to achieve the Sheriff's expansion goals for the jail, and accommodate an alignment of Alton Parkway that encroaches further onto the jail site to avoid the Wash, the footprints of the buildings would need to be decreased. Additional floors would be needed in order to compensate for the lost floor space. Unidentified local municipalities would object to the resulting building heights. These objections would make avoiding the Wash impractical and unrealistic according to County staff.

The Wildlife Corridor is part of the City of Irvine's land use plan for the re-use of the former El Toro Marine Corps Air Station. The Wildlife Corridor is not being constructed to meet any regulatory obligation. In proposing to construct the excavated channel to enhance the function of the planned Wildlife Corridor, and then asserting that the cumulative ecological benefits of the Corridor and the excavated channel justify the

proposed fill of Borrego Canyon Wash, the County is claiming the benefit of a project over which it exercises no control.

Without any control over the completion of the Wildlife Corridor, there is a risk that those cumulative ecological benefits may not be realized for a considerable amount of time, if at all. County staff has provided documentation from the City of Irvine in order to assist Regional Board staff in assessing that risk<sup>2</sup>. Those documents indicate that the City of Irvine has committed \$13.5 Million for the construction of certain elements of the Wildlife Corridor. Other elements of the Wildlife Corridor are considered "Backbone Infrastructure", which generally includes drainage infrastructure to convey storm water runoff from developed portions of the Great Park. The drainage infrastructure will necessarily be constructed in concert with development, which will proceed according to economic conditions. Consequently, while there is a demonstrated commitment by the City of Irvine to the ultimate construction of the Wildlife Corridor, construction timing and accrual of asserted ecological benefits resulting from the proposed project will be determined largely by varying economic conditions rather than any particular deadline, and without absolute certainty.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project, and information provided subsequently in the County's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR relating to water quality. Based on the mitigation proposed in the EIR, and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. Thus, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

---

<sup>2</sup> Amended and Restated Development Agreement between the City of Irvine and the Irvine Redevelopment Agency and Heritage Fields El Toro, LLC, August 11, 2009; Irvine City Council Special Meeting Minutes, August 11, 2009; and Orange County Great Park Staff Report, October 22, 2009.

**This 401 Certification is contingent upon the execution of the following conditions:**

- 1) This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any of the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 2) The discharger must comply with all conditions and provisions of the U.S. Army Corps of Engineers' Clean Water Act Section 404 Permit(s).
- 3) All proposed structural treatment controls for storm water runoff from the project site must be constructed and operational prior to the public use of the roadways.
- 4) A copy of this Certification and any subsequent amendments must be maintained at the project site for the duration of work.
- 5) Culvert(s) crossing under the proposed roadway must accommodate the movement of wildlife to and from waters of the State on either side, to the satisfaction of staff of the Department of Fish and Game.
- 6) The discharger must construct the proposed 5.45-acre waters of the State within the excavated channel as proposed. The work must proceed according to a final written mitigation plan, prepared according to U.S. Army Corps of Engineers' guidelines, in general conformance with Bonterra Consulting's December 4, 2008 Draft Habitat Mitigation and Monitoring Program, and in strict conformance with the conditions of this Certification.
  - a. Construction work for the excavated channel and all appurtenant structures must begin, and be completed, concurrent with the proposed roadway project, but not later than November 30, 2011.
  - b. The five-year monitoring period must begin upon the initial diversion of flow from Borrego Canyon Wash into the excavated channel.
  - c. Assessments of the condition of the excavated channel must be included with each annual monitoring report. All assessments must be completed according to published and generally accepted methods (California Rapid Assessment Method) in a manner that allows for meaningful year-to-year comparisons.
  - d. The constructed waters of the State must demonstrably support the Rare, Threatened, and Endangered Species beneficial use as it pertains to the Least Bell's vireo.
  - e. In the event that the Wildlife Corridor is not constructed within 60-months of the date of this Certification, the discharger must provide additional compensatory mitigation to account for the delay. The mitigation must consist of eradicating 0.75 acre of woody invasive plant species in and adjacent to waters of the State in the Lower Santa Ana



River watershed. The eradication effort must be initiated within 60-days and include follow-up maintenance for a minimum of 10-years thereafter. The eradication work must be conducted for the sole satisfaction of this Certification.

- 7) The diversion of flow from Borrego Canyon Wash into the excavated channel is prohibited until all engineered channel stabilization structures therein are fully constructed.
- 8) Discharges diverted from Borrego Canyon Wash into the excavated channel (the proposed mitigation site) and the Wildlife Corridor must be free of sediment in quantities that have the potential to impair the physical and biological integrity of the Wildlife Corridor channel and the excavated channel.
- 9) The diversion structure proposed in Borrego Canyon Wash must be constructed in a manner that allows for the structure to be readily adapted to alter flows in order to support beneficial uses.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened



violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at [http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jae Chung  
U.S. Fish and Wildlife Service – Christine Medak  
Department of Fish and Game – Erinn Wilson  
State Water Resources Control Board, Office of Chief Counsel – David Rice  
State Water Resources Control Board, DWQ – Water Quality Certification Unit  
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8

